IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
REVIEW PETITION (LODGING) NO.8 OF 2005
IN
WRIT PETITION NO.896 OF 2002

Vinod Shantilal Shah .... Review Petitioner

Vs.

M/s. Kiran Textile Industries & Anr. .... Respondents

Shri N.M. Ganguli for the Review Petitioner/ original Respondent No.1.

Sarvasri K.M. Naik with S.P. Salkar and S.P. Dhulapkar for the Respondent No.1/ original petitioner.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: OCTOBER 21, 2005

P.C:

1. Heard. The grievance of the applicant/petitioner is that at the time when the writ petition was disposed of on 13-8-2004, this Court was not informed that the amount which was received by the applicant by virtue of the cheque dated 31-10-2001 was without prejudice to his rights and subject to the calculation about the arrears to be furnished by the opponent/original petitioner to the applicant. According to the petitioner, therefore, there is error apparent on the face of the record which would warrant recall of the order dated 13-8-2004 and fresh hearing of the Writ Petition No.896 of 2002.

2. It cannot be disputed that the writ petition was

disposed of considering the fact that whatever amount which was offered towards the dues of the applicant was accepted by him without any reservation of right to dispute the amount which was due to him and therefore the proceedings under Section 33C(2) of the Industrial Disputes Act, 1947 which were initiated in spite of receipt of the amount under the award dated 11-3-1983 were quashed. It is now sought to be contended that the said amount was received subject to the petitioner in the writ petition furnishing proper calculation regarding the amount which was due and payable to the applicant and in that regard it is stated that the applicant had made an endorsement on the cover of the letter dated 31-10-2001 and which was followed by another letter dated 8-11-2001. Undisputedly, neither the alleged endorsement nor the alleged letter dated 8-11-2001 were referred to in the proceedings in the Writ Petition No.896 of 2002 nor those facts, if true, were brought to the notice of this Court at the time of disposal of the said writ petition. The order passed disposing of the said writ petition is sought to be reviewed on the basis of the said material which was not on record but which is for the first time referred to in the review petition. Sole explanation given for non-disclosure of the said material is that on the day when the writ petition was disposed of, the applicant herein was not personally present in the Court. It is not in dispute that the writ petition was disposed of

after due service of notice in that regard upon the applicant. The applicant had enough opportunity to file affidavit in reply and to place on record those facts. There is no explanation as to why such procedure was not adopted by the applicant. That apart, in the matter of review proceedings, it is primarily to be shown that there is some error apparent on the face of the record. Once the applicant wants this Court to refer to a material which was not on record when the order dated 13-8-2004 was passed and on some extraneous material the applicant expects the Court to review the order dated 13-8-2004, certainly such a procedure is neither known to law nor it is permissible. Thus, this cannot be an error apparent on the face of the record which would warrant exercise of review jurisdiction in the matter. Hence the review petition is liable to be dismissed and is accordingly hereby dismissed. There shall be no order as to costs.